

sanction the person who received information improperly by, among other things, denying assistance to that person.

#### § 4.22 Definitions.

*Application* means a written request for assistance regardless of whether the request is in proper form or format.

*Assistance* does not include any contract (e.g., a procurement contract) that is subject to the Federal Acquisition Regulation (FAR) (48 CFR ch. 1).

*Disclose* means providing information directly or indirectly to a person through any means of communication.

*Employee* includes persons employed on a full-time, part-time, or temporary basis, and special government employees as defined in 18 U.S.C. 202. The term applies whether or not the employee is denoted as an officer of the Department. "Employee" is to be construed broadly to include persons who are retained on a contractual or consultative basis under an Office of Human Resources appointment. However, "employee" does not include an independent contractor, e.g., a firm or individual working under the authority of a procurement contract.

*Material or materially* means in some influential or substantial respect or having to do more with substance than with form.

*Person* means an individual, corporation, company, association, authority, firm, partnership, society, State, local government, or any other organization or group of people.

*Selection process* means the period with respect to a selection for assistance that begins when the HUD official responsible for awarding the assistance involved, or his or her designee, makes a written request (which includes the selection criteria to be used in providing the assistance) to the Office of General Counsel (OGC) to prepare the NOFA, solicitation, or request for applications for assistance for publication in the FEDERAL REGISTER. The period includes the evaluation of applications, and concludes with the announcement of the selection of recipients of assistance.

#### § 4.24 Scope.

(a) *Coverage*. The prohibitions against improper disclosure of covered selection information apply to any person who is an employee of the Department. In addition, the Department will require any other person who participates at the invitation of the Department in the selection process to sign a certification that he or she will be bound by the provisions of this part.

(b) *Applicability*. The prohibitions contained in this part apply to conduct occurring on or after June 12, 1991.

#### § 4.26 Permissible and impermissible disclosures.

(a) Notwithstanding the provisions of Section 103, an employee is permitted to disclose information during the selection process with respect to:

(1) The requirements of a HUD program or programs, including unpublished policy statements and the provision of technical assistance concerning program requirements, provided that the requirements or statements are disclosed on a uniform basis to any applicant or potential applicant. For purposes of this part, the term "technical assistance" includes such activities as explaining and responding to questions about program regulations, defining terms in an application package, and providing other forms of technical guidance that may be described in a NOFA. The term "technical assistance" also includes identification of those parts of an application that need substantive improvement, but this term does not include advising the applicant how to make those improvements.

(2) The dates by which particular decisions in the selection process will be made;

(3) Any information which has been published in the FEDERAL REGISTER in a NOFA or otherwise;

(4) Any information which has been made public through means other than the FEDERAL REGISTER;

(5) An official audit, inquiry or investigation, if the disclosure is made to an auditor or investigator authorized by the HUD Inspector General to conduct the audit or investigation;